

COMMISSIONERS APPROVAL

CHILCOTT *ag*

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....March 14, 2006

Members Present..... Commissioner Greg Chilcott,
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met for a Request for Commission Action on Mountain View Orchards Block 12, Lot B, AP Minor Subdivision with one variance request. Present at this meeting was Civil Counsel James McCubbin, Planner Ben Howell, Developer Steve Zech and the Developer's Consultant Leonard Shepherd. Also present were neighbors to this proposed subdivision: Mike and Nann Jorgensen.

Ben presented a power point presentation and staff report as follows:



REQUEST FOR COMMISSION

ACTION

OG-06-03-307

Site Visit: March 9, 2006 @ 3:30 p.m.
Meeting: March 14, 2006 @ 9:00 a.m.
Request: To act on the Mountain View Orchards Block 12, Lot B, AP Minor Subdivision with One Variance Request.

I. ACTION REQUESTED

This is a request from Steven Zech, represented by Leonard Shepherd, to create the Mountain View Orchards Block 12, Lot B, AP Minor Subdivision with One Variance Request.

II. BACKGROUND

The Mountain View Orchards Block 12, Lot B, AP Minor Subdivision is a five-lot subdivision of 13.41 acres located northeast of Corvallis (See Map 1). The property is relatively flat and the majority of it is currently pasture or vegetated with native grasses and noxious weeds. The property has water rights through the Bitterroot Irrigation District and the Mountain View Water Users Association, and these rights are proposed to be divided between the five lots.



Map 1: Location Map

(Source Data: Ravalli County Planning Department)

In conjunction with the subdivision proposal, the applicant is requesting a variance from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, to allow Coyote Creek Drive, a proposed privately-maintained road that would access Lots B4 and B5 of the subdivision, to be built to two-lot local road standards, with the exception of a 30-foot wide public access and utility easement.

Staff recommended denial of the variance request and conditional approval of the subdivision proposal

III. PLANNING BOARD RECOMMENDATION

The Ravalli County Planning Board conducted a public hearing on this proposal on February 1, 2006 and took the following actions:

The Board chose not to review the variance criteria beyond their discussion and the analysis in the staff report. The Board made a motion to **approve** the variance request, based on the finding that the road will only serve two lots and with the condition that the road shall have a 20-foot wide gravel travel surface within a 30-foot wide public road and utility easement. **The Board voted 7-0 to approve this motion.**

The Board reviewed the subdivision proposal against the six criteria as follows:

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices. *Three Board Members agreed the effects were non-significant and four Board Members found them significant.*
2. Effects on Agricultural water-user facilities. *All agreed the effects were non-significant.*
3. Effects on local services, including public road system, police and fire protection, utilities, and public schools. *All agreed the effects were non-significant.*
4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds. *All agreed the effects were non-significant.*
5. Effects on wildlife and wildlife habitat, including fisheries and mammals. *All agreed the effects were non-significant.*
6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas. *Six Board Members agreed the effects were non-significant and one Board Member found them significant.*

The Board made a motion to **approve** the subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, amending Condition 4 to state that an encumbrance of \$250 per lot shall be made to the Corvallis School District upon first conveyance of each lot

and Condition 11 to add a Notification of Proximity to Agricultural Operations on the final plat. **The Board voted 5-2 to approve this motion.**

Comments from the meeting are contained in the record.

V. PLANNING BOARD'S RECOMMENDED MOTIONS

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. That the variance request from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, to allow Coyote Creek Drive to be improved to meet two-lot local road standards with the exception of a 30-foot wide public access and utility easement, *be ~~denied~~ approved*, based on the finding ~~of fact and conclusions of law in the staff report~~ that the road will only serve two lots and with the conditions as amended herein.
2. That the Mountain View Orchards, Block 12, Lot B, AP (Zech) minor subdivision *be approved*, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report as amended herein.

VI. PLANNING BOARD'S RECOMMENDED CONDITIONS

(Changes to staff's recommended motion is in underline/~~strikeout~~.)

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous.
(Effects on Agriculture)

Notification of Irrigation Easements. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities/diversion structures whenever necessary to keep them in good condition. The Bitterroot Irrigation District and Mountain View Water Users Association must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitterroot Irrigation District and Mountain View Water Users Association have the right to use the easements to maintain the ditches.

Please contact the Bitterroot Irrigation District, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182, and the Mountain View Water Users Association, 477 Bailey Lane, Corvallis, Montana, 59828, 961-4343 for more information. (*Effects on Agricultural Water User Facilities*)

Notification of Road and Common Access Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the Common Accesses for Lot B1 and Lot A of AP 542833 and Lots B2 and B3 or Coyote Creek Drive, the internal subdivision road providing access to Lots B4 and B5 of this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. Road Maintenance Agreements were filed with this subdivision and outline what parties are responsible for road maintenance and under what conditions. (*Effects on Local Services and Effects on Public Health & Safety*)

Limitation of Access onto a State Road. A "no ingress/egress" restriction is located along the Sutherland Lane frontage of the subdivision, which precludes vehicular access onto this County-maintained road, excepting the approved approaches for the two common accesses and Coyote Creek Drive. This limitation of access may be lifted or amended with approval of the County. (*Effects on Local Services & Effects on Public Health and Safety*)

2. Protective covenants to be filed with the final plat shall include the following provisions:

Living with Wildlife. (See Exhibit A-1 for required provisions.) (*Effects on Agriculture & Effects on Wildlife and Wildlife Habitat*)

Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to creating and/or improving a community water or wastewater treatment system and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6", maximum grade of 6%, and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the Uniform Fire Code. Please contact the Corvallis Rural Fire District at PO Box 13, Corvallis, MT, for further information on the requirements of the Corvallis Rural Fire District

and/or the Uniform Fire Code. (*Effects on Local Services & Effects on Public Health and Safety*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at the intersection of the driveways leading to both of the residences and Wagon Wheel Way as soon as construction on the residences begins. (*Effects on Local Services & Effects on Public Health and Safety*)

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). (*Effects on Natural Environment*)

Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spot lighting of flag poles shall be permitted. (*Effects on Public Health & Safety*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (*Effects on Public Health and Safety*)

Amendment. The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.

3. The subdivider shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. (*Effects on Local Services*)

4. The applicant shall ~~provide evidence that a financial contribution (to be decided by the Planning Board) has been contributed to the Corvallis School District prior to final plat approval~~ place an encumbrance of \$250 per lot to the Corvallis School District upon first conveyance of each lot, including lease or rent, on the final plat. *(Effects on Local Services)*
5. The applicant shall provide a letter from the Corvallis Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per minute water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence that a \$500 per lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services - Fire Protection & Effects on Public Health and Safety)*
6. The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision, in accordance with E-911 addressing policy. *(Effects on Local Services & Effects on Public Health and Safety)*
7. The applicant shall install a stop sign at the intersection of Coyote Creek Drive and Sutherland Lane, subject to the review and approval of the Planning Department in consultation with the Road Department. *(Effects on Local Services & Effects on Public Health & Safety)*
8. Coyote Creek Drive shall be labeled as a privately-maintained road within a public road and utility easement on the final plat. *(Effects on Local Services)*
9. The applicant shall provide for an additional five feet of easement along the Sutherland Lane frontage of the subdivision on the final plat. *(Effects on Local Services)*
10. The final plat shall show a no ingress/egress zone along the Sutherland Lane frontage of the subdivision, excepting the approaches for the two common accesses and Coyote Creek Drive, as approved by the County Road Department. *(Effects on Local Services & Effects on Public Health & Safety).*
11. ~~The developer shall pave all approaches a minimum of 20 feet wide from the surface of Baldwin Road back to the edge of the right of way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the MDT, if specified in the approach permit.~~ The developer shall place the following Notification of Proximity to Agricultural Operations on the final plat: This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous.
12. The internal subdivision road, Coyote Creek Drive, shall be built to two-lot local road standards, with the exception of a 20-foot wide gravel travel surface within a 30-foot wide public road and utility easement.

REMAINING ISSUES: None.

FISCAL IMPACT: No extraordinary fiscal impacts noted.

ATTACHMENTS: Application package
Staff Report with attachments
Planning Board meeting minutes for the February 1, 2006
public hearing (includes additional material, staff memo and
attachments)

STAFF: Benjamin H. Howell

DATE: March 3, 2006

Commissioner Lund read the following statement:

Today's agenda includes one or more land use issues. Because of my years of service as Ravalli County Clerk & Recorder and now as Commissioner and because members of my family are involved in the real estate profession, I am providing this statement in the interest of full and open disclosure. My husband, son and brother-in-law are realtors who conduct business in this county. I do not participate in their real estate business or related matters except as the passive title owner of the building rented by their real estate business. Although connections with my family or their business and the land use issues facing us today are possible, I am not aware of any direct connections and thus do not believe I have any conflicts of interest arising out of my participation in today's meeting.

Commissioner Lund called for public comment.

Leonard stated the variance request was not approved as presented. It was modified in that the variance was at 30' and the width of the road is 20'. The reason is this is a two-lot local road. Steve stated when they proposed the two-lot local road it was in accordance with the regulations at the time. This is a driveway, not a road. Steve stated they would like the Commissioners to approve this variance. Commissioner Lund stated this subdivision came under the old regulations.

Mike & Nann Jorgenson, 1649 Mountain View Orchard Road, stated they are not necessarily opposed to this subdivision, but would like to know more about this. Mike stated they have issues about another road that 'dead ended' into their property over a year ago. They were here today to find out how the Board of County Commissioners deals with the roads in the area, due to the growth. He stated they would like to learn about the covenants on this particular subdivision, as it affects all of the properties in the area. Commissioner Lund stated this property had covenants placed on it in 2004 by Steve Zech. Steve stated when he purchased the property there were no covenants, but he placed two pages of covenants on the property. He stated he is also concerned in maintaining the values of the property. The square footage of the homes will be a minimum of 2,000 square feet. He also placed the septic and wells to allow for everyone to have views of the mountains.

Leonard stated the road standards are defined in the County regulations. There are some contradictions, but overall Mr. Jorgensen would have his answers after reading the regulations.

Public comment was now closed.

Commissioner Thompson stated the application shows a boundary line relocation. Ben stated one of the original houses on the parcel was pulled out and given it's own lot. Commissioner Thompson asked about the roads. Ben stated the regulations allow for common accesses, so this actually falls on a minor local. The Developer has applied for a 30' easement instead of the 60' with asphalt. Commissioner Thompson advised the Developers not to apply for that when the Fire Department needs more than a 12' road. He would never grant approval for that narrow width for emergency services. In regard to the roads, he stated he is troubled with the three accesses from Sutherland, which is a gravel road. Sutherland is a direct line between Bailey and Popham. Three accesses are excessive and if you are going to share common accesses Lot B-1 and B-2 should share, and the proposed road should access lots 3- 5. He asked if this was still a 60' easement with 20' width. Ben stated the regulations call for 20' pavement with cul-de-sac. But they have called for a variance. Commissioner Thompson stated the hammerheads do not allow for easy access for the fire trucks. He stated this is prime property and can see some very nice homes. He appreciates the covenants, but does not like the hammerhead in case of a fire emergency. Commissioner Thompson asked about the high-pressure gas line. Leonard stated it lies along the west side of Sutherland Road and does not come through the subdivision.

Commissioner Lund asked Leonard about the DEQ approval. There appears to be an existing well. Leonard stated that is for the house to the north. Commissioner Lund asked why there are 10' non-egress and egress zones. Leonard stated it limits access to Sutherland. It limits the impact on Sutherland Road. This allows six homes for three accesses. Two of the lots access from an interior road. Commissioner Lund stated they are trying to have as few accesses as possible. She stated Sutherland would become a crossroad in the future. Leonard stated one access existing, so they are only adding two accesses for five lots. Commissioner Thompson stated they are adding three accesses because of the traffic. Leonard stated unless they want an interior road, there has to be access to these lots.

Steve stated they are not considering this 12' as a road, but as a driveway. He stated they designed this in order to minimize the access into Sutherland Road. James stated this goes to more than one lot so it is a road, not a driveway. The regulations specifically stated this. Ben concurred with this interpretation.

Commissioner Thompson stated it appears there are three accesses to the road. He stated he would like this to be reduced. He suggested Coyote Road could access three lots or to come across the backside and access all five. They could also share access lots 1 and 2, and the other road could access lots 3-5. We need to look to the future and more houses in this area create more accesses. So we need to reduce the amount of accesses.

Commissioner Lund asked if the Commissioners could propose something to Steve or does he have to bring back another plat. James stated the Board of County Commissioners could propose options, but this is a fine line of a condition, or back to the public hearing process before the Planning Board. Any change of access is significant enough to go back to the Planning Board. A new plat will have to be drawn, so the Board of County Commissioner could discuss some options. You cannot say here today what is to be allowed, but you can discuss the options. Leave out the specifics; let that be decided in the public process.

Steve asked James if the Planning Board recommended their approval. James stated the Planning Board is simply a recommendation. The Board of County Commissioners can take it as is or deny it. If it is denied, then this will have to go back through the whole subdivision process.

Commissioner Thompson stated the variance and subdivision are two different issues. The subdivision has covenants and approval from DEQ, no ground water issues, so he does not see a lot of problems with the subdivision itself. But the access is an integral part. So if we approve the subdivision and deny the variance, it would be a 60' easement, with 20' width of pavement, with a cul-de-sac. Ben stated that would be the default. James said in order to get to lot B-2, without an access on the main exterior road, there has to be an interior road around the back or something. If there is no shared drive between B-2- and B-3, there must be ingress to B-3. Commissioner Thompson asked if the variance is denied, can they access all three lots, so could they condition this access to be between lots 1 and 2? James stated you would still have three accesses. Commissioner Thompson stated no, because that driveway still exists. James said if you are changing the interior road, then it does not need to go back before a public hearing. Leonard stated this follows the regulations and if they are required to go back to the Planning Board, then the regulations need to be changed. They received no agency contacts that stated there is a public health and safety issue. They have followed the regulations and now the Board of County Commissioners feels they have created an unsafe condition when they have followed the regulations.

Leonard stated you can move the interior road, but you still have three accesses. The Board of County Commissioners has not gained anything. Steve stated the septic areas are in front of the lots, and that is where the homes will be. Leonard stated the whole purpose for conditions is when the issues make the decision to go above and beyond. At any step in the process anything can be discovered and that is a Board of County Commissioners' decision.

Leonard stated he understands the Board of County Commissioners has discretion. But on findings of fact, if the accesses can be modified, the purpose is to bring those facts forward. But there is nothing brought forward today that states this is an unsafe condition. James stated the anticipated increased traffic on Sutherland creates a dangerous situation over time. That would need to be a written and expressed finding.

Commissioner Thompson said the variance request is because the developer does not want to build a particular type of road. This is within our discretion.

Commissioner Lund asked if they approved the variance, with a 60' easement, 20' surface and dust abatement. James stated that does not address the access issue. Commissioner Lund stated she does not want paving in this rural area.

Ben stated the Road Department does have their access policy adopted in January, and that is for one access for all five. Commissioner Lund said that was adopted after this subdivision. James stated if that policy is based on safety concerns then that is part of your findings. If you reduce the number of accesses, other than to shift them one access to the north, you need to send this back to the planning board.

Commissioner Thompson said it appears they need to go through the variance criteria. The developer should hear our findings so he knows what the issues are before going back to the Planning Board. James stated that is one way to do it, but if you want the developer to change the accesses, it has to go back to the Planning Board. A change in access will affect the variance. Commissioner Thompson said there are too many accesses on the road. They discussed farm trucks, etc., at the Planning Board meeting.

James stated you may have new information, and if so, it goes back to the Planning Board under SB 116. Impact of traffic, anticipating traffic on the road, etc., allows them to take it back through the public hearing process. Thus it becomes clear to the developer that you are not in favor of approving this. If new information is not significant, you can go through the variance.

Commissioner Lund stated the developer is caught in between the changes that have been made. Leonard was simply following the regulations this subdivision was under. James stated what is relevant is that you are anticipating more traffic and the road department finds the number of accesses for safety purposes. Commissioner Lund said most of this is contradictory.

Steve stated Sutherland Lane is a low-impact road. It is not on the seven-year plan to even be paved. So this does not have a high priority. Road counts are 130 per day, compared to 1,000 on other roads. It is used by local traffic. Commissioner Thompson stated this is the fourth subdivision on this road over the past 4 years. Therefore, he would assume, there would be another 3-4 subdivisions. While it might be a rural road, over time there will be more lots and more traffic. With the upcoming issues, we will find pressure from the schools to do something with the road. This road will be in need of major work. He stated he does not want that many accesses, due to the increased growth. He stated he wants to be consistent on all the accesses, nothing particular to this subdivision.

Commissioner Thompson stated he is having a hard time finding how to approve the variance and the number of accesses, so he does not see how he can approve the actual subdivision. The developer has put forth this plan so he does not have to build the road.

There are regulations that show what you should do and the developer put forth how he should not have to build the road. James said it sounds like this is new information, so under SB 116, it needs to go back to the Planning Board.

Commissioner Thompson made a motion, in light of information this date, to send this subdivision back to the Planning Board for further discussion and hearing.

Commissioner Lund seconded for discussion. Commissioner Lund asked Ben if this could be expedited and not be put into the pile. Ben said the soonest would be April 19th or so. Leonard asked what choice they have; he is fairly flustered at this point.

Commissioner Lund said they should make every effort to get this back to the Planning Board, with a public hearing as soon as possible. All voted "aye".

In other business, the Board met for various administrative matters as follows:

Commissioner Thompson made a motion to grant final approval to the Sunnyside Orchards Block 3, Portion of Lot 16 AP. Commissioner Lund seconded the motion, and all voted "aye".

Commissioner Thompson made a motion to approve Resolutions for Budget Transfers for:

- Clerk and Recorder (Resolution # 1811)
- Environmental Health (Resolution # 1810)

Commissioner Lund seconded the motion and all voted "aye".

The Board met to open the dust abatement bids. Present was Road Supervisor David Ohnstad and Citizen Mark Melotz who owns Melotz Trucking. Two bids were received:

- 1) Dust Busters of Wyoming bid \$.21 sq. ft. at \$97,650.00 and \$.21 sq. ft. at 12,600 for a total of \$110,250.00
- 2) Weed Dust Control of Whitehall, MT. at \$.27 sq. ft. at \$125,550 and \$.32 sq. ft. at \$19,200 for a total of \$144,750

Commissioner Thompson made a motion to have the Road Department review the bids for recommendation. Commissioner Lund seconded the motion and all voted "aye".

Business owner Mark Melotz stated he did not agree with Part B of the bid package, stating the County should not be in the business of dust control on private land. He stated he spends thousands of dollars in advertising every year and the County is taking away his business. He also stated he would have bid on this but his bid would not have been accepted had he not filled out Part B. Commissioner Lund stated Mark should have bid on the package and left out Part B. David stated this is an open process and they do not force anyone to participate in the bid process. Mark stated the County Attorney's Office did not allow Part B to be included in the bid package last year, but this year it was included. David stated that was because of the environmental issues of dust.

Commissioner Lund stated the bid does not deal with private roads, only public easements that might be private roads.

In other business the Board met with Ken Senn in regard to the road improvement issues for his development on Grantsdale and Golf Course Roads. Present at this meeting was

Jason Rice of Landworks Consulting, Developer Ken Senn, and Interim Planning Director Karen Hughes.

Jason stated while they were in the subdivision process, they asked other agencies for comments, which included a request as early as 2004, to the Road Department. We asked for their comment on two occasions and received nothing back. At the time of conditional approval, we also made contact with the Road Department, again by letter, asking for their comment. No comment was received. Now, at the time of final plat the Road Department is saying Grantsdale Road is a non-County standard road. During this whole subdivision process, we as the consultants, acting on behalf of the Developer, did everything that was asked of us, receiving no comments from the Road Department. Jason stated they understand there is a transition of policies and personnel within the County. But at the same time, the developer has shown due diligence on all of the questions and things that are required of him. Jason stated they have submitted an entire final plat packet and everything is ready to go. Jason stated when the developer receives preliminary plat approval he is allowed to receive monies on lots within the subdivision. That is what has occurred on 22 of the lots. The lots have been marketed, and they did receive the preliminary plat approval, which included the road and drainage plan. Jason stated the process is flawed if they now have to address this new information on Grantsdale Road, instead of the information they have dealt with during the whole process.

Ken stated he committed himself based on the process set up by the County. He did not have time to factor in any of this new information. He is pleased they did the curbs, *sidewalks* and gutters, having done \$750,000.00 worth of improvements. To add any new requirements would not be right and it is inconceivable to him that this is coming up now.

Commissioner Lund indicated John had given them a letter in regard to the drainage plans, etc. Jason stated that was the same information from the preliminary plat, and it was based on the fact that Grantsdale is a standard County road, not the new information stating it is a non-standard County road. Jason also noted the road reviews are \$200.00 to \$500.00 for each lot, which is quite expensive for the developer. Jason also stated they had letters from the previous Road Supervisor, which were based on the regulations at the time. When the previous Road Supervisor was employed, they always got responses back, and obviously much quicker. In this case, they never did get a response from Road Supervisor David Ohnstad. Jason also stated he was nervous up to the hearings, but the road issue was not addressed in light of this new information coming from David.

Commissioner Lund stated there are other subdivisions up the hill, such as Broken Arrow and she had asked David what the next step was. Jason stated they could not pay pro rata since it is more than 20 lots. Had they had this information they are receiving from David now, they might have asked for a variance. Further, because the regulations are written in the manner that they are, these are improvements, not pro rata, which is assessed at the time of final plat. Jason stated at this point there is a break in the procedure, which is due to a changing of the guard. This is not the developer's problem.

And at this point, it appears that they are being asked to take the road and grading plans back to the Planning Board.

Karen stated prior to this, there were so few subdivisions over 21 lots, that they 'got caught' on this one. And after addressing some of these questions with James she agrees. She stated the planning staff acknowledged this proposed development was over 21 lots, but did not catch the issue of the County road standard. Karen further indicated in terms of the roads, Jason caught that we had inserted language of pro rata, which had to be corrected at the Planning Board meeting. Jason stated he did not know if it was fixed at that time because he did not have time to review it. Karen stated the roads were noted as County standard and that is how they proceeded. And she did not hear from the current Road Supervisor in order to act on anything different. Jason stated they addressed this up front so they would know the impacts, so they would know what needed to be done for the road issue. He also noted that even at this point, he still does not know what needs to be done on Grantsdale. For Golf Course Road, it needs chip seal, but no other County roads are being chip-sealed. So he does not necessarily agree with that. Karen stated the standards that would apply are the old standards, so chip seal would not apply.

Jason stated the final plat is being held up and we have a builder ready to go. So here we sit, and it is frustrating. Commissioner Lund stated a variance could be given up to the time of final plat. Karen stated the variance would need to go through the public process. Jason stated that would be more expensive to do now, and had they known that earlier they could have done something different.

Ken stated he is sitting on \$750,000.00 in borrowed money. The lots go on sale starting tomorrow. Jason stated this is a matter of business and economics, such as the builder who wants to build for the Tour of Homes. He stated the developer has satisfied the conditions of approval.

Commissioner Thompson stated this is a legal problem and the Commissioners need to visit with legal counsel and the Planning Department to see what can be done. If the County is causing the problem we need to rectify this. He stated he understands the time frame and James needs to review this upon our decision. Karen stated any action today in regards to preliminary plat means the substandard road needs to be brought up to County standards. Jason stated the action required of the applicant/developer is they shall contact the road and bridge department. And they complied with that. Commissioner Lund said you asked and now you are being told today, which is a little late. Jason stated the Commissioners also have a record of other subdivisions, like Wildflower, that utilized Grantsdale as a County-standard road. He asked how that changed from the previous subdivision to this one, as they were under the same regulations. He stated the road improvement is not done at the time of final plat approval, like pro rata is done.

Ken asked what time element the County would be utilizing for this decision. He reiterated they have done everything and he has 'a lot on the line here'. Karen stated she has no idea of James' time frame for working on this issue.

David stated it does not matter when the assessment was, and any reasonable judgment is that it is a County road. He could not change the assessment of those who preceded him. He stated he made it abundantly clear, though perhaps not in writing, that there are relatively few County-standard roads. David stated he couldn't change what happened on Wildflower, as it is a moot point. He stated his office 'typically responds to the Planning Department'. And while there has been some change of personnel over the past two years, that is immaterial. The bottom line is that this is not a County-standard road. He stated when the Planning staff asked them about the road, they responded, although not in writing. It is not a County-standard road. The question is how to rectify this in a timely fashion. The length of the road is 300-400 feet, so we should come to a common understanding of what improvements are needed.

Jason stated that is not so simple. He asked if the County has good records of what has been placed under the road. Assuming 2-4' of $\frac{3}{4}$ minus, then the paving might be around \$125,000.00. That amount is not as small a deal as David makes it out be. It is abundantly clear this is not a County-standard road, but we processed this application and development under what the County said, and we rely upon the County for that direction. This was reviewed under the old standards. The new regulations are much tighter; that is good. But we are not under the new regulations. We need to file the plat. So Ken has some decisions to make in regard to this new information and new cost to him.

Karen stated she just visited with James and he does not know when he can get to this. Jason stated the final plat packet could be given to the Commissioners so that is ready to go while they are waiting for James' opinion. He stated they want to make sure this is resolved, and the developer could bond the improvements, but that is Ken's decision to make. Jason stated he is sure Ken will want to visit with his own legal counsel. Jason stated he was surprised when Golf Course Road was even on the table for any improvements. He stated the information about Grantsdale Road should be given to us, not held back. David stated the roads that were built to County standards are in the single digits. Paving deteriorates over time and things need to be done to bring it back to certain standards. They were designed and constructed properly, but there are very few of them. If there was miscommunication, that is a problem, but I have never failed to answer any phone calls. To expedite a resolution, we stand ready and willing to identify reasonable solutions to this, in order to move on.

Jason stated they still must know what the road section needs to make it a County road. And it still comes down to a matter of logistics for Ken. Jason stated he still does not know how they calculate pro rata at the end of the project when it comes out two years later than the time of application.

Karen stated the Commissioners should direct James on when they want this issue reviewed. Commissioner Thompson stated he has some basic questions for staff, but this is not the right time to ask them. The Board of County Commissioners needs to meet with Civil Counsel, Planning and Roads. Then we can respond to this issue.

Jason said the 'worst case' scenario is that we ask for a variance. Ken has always wanted to do what is right and he has acted in that regard. Karen stated they might want to put their variance request in now. Jason stated they would want to know the costs prior to doing that. David stated he would be gone the first three weeks of April. Jason stated he would like something formal from the Road Department and they can meet on site now. David stated he could not go there right now as he has other plans, but any reasonable person can look at it and figure it out.

In other business, Commissioner Thompson attended a U of M Land Use Law Clinic on Planning the Highway 93 Corridor for land use during the evening hours.